

6472, Group 6665, Group 6859, Group 7063, Group 7234, Group 7428, Group 7632, Group 7803, Group 7997, or Group 8201 also corresponds to the election of SEQ ID NOs: 1 and 2.

The Commissioner may require restriction if two or more “independent and distinct” inventions are claimed in a single application (35 U.S.C. § 121). According to the MPEP § 802.01, “independent” (i.e., not dependent) means that there is no disclosed relationship between the two or more inventions claimed. Furthermore, two or more inventions are related (*i.e.*, not independent) if they are disclosed as connected in at least one design (*i.e.* structure), operation, or effect. Accordingly, restriction would be improper if it is made between dependent inventions. In the present case, not all the inventions are independent or unrelated. The groups corresponding to a specific SEQ ID NO are related since they are connected in at least one design/structure, *i.e.* the same sequence. Thus, because the groups corresponding to the same sequence are related and are not “independent and distinct,” restriction as to these groups would be improper and at least these groups should be examined together.

Moreover, Applicants believe that there is no undue burden on the Examiner to search at least all the groups corresponding to the elected sequence together. As stated in § 803 of the M.P.E.P. “[i]f the search and examination of the entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” (M.P.E.P. § 803, emphasis added).

As discussed above, the groups corresponding to the elected sequence are all related since they share the same sequence. With the election of a specific sequence, the same art and field of search relevant to the elected sequence would also be relevant and co-extensive to any product (*i.e.* plant, cell, expression cassette, etc.) comprising the elected sequence or to methods or processes of using or making the elected sequence. As a result, there would be no undue burden on the Examiner to examine the groups corresponding to the elected sequence as only a single search would be required. Thus, it is respectfully requested that the restriction requirement be reconsidered and withdrawn at least as to the groups corresponding to the elected sequence.

CONCLUSION

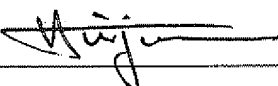
For at least the above reasons, Applicants respectfully request that the restriction requirement be reconsidered and withdrawn at least as to the groups corresponding to the elected sequence SEQ ID NOs: 1 and 2, *i.e.* to Group 1, Group 388, Group 591, Group 785, Group 989,

Group 1160, Group 1354, Group 1558, Group 1729, Group 1900, Group 2093, Group 2287, Group 2491, Group 2662, Group 2856, Group 3060, Group 3231, Group 3425, Group 3629, Group 3800, Group 3994, Group 4198, Group 4369, Group 4563, Group 4767, Group 4938, Group 5132, Group 5336, Group 5507, Group 5700, Group 5893, Group 6086, Group 6279, Group 6472, Group 6665, Group 6859, Group 7063, Group 7234, Group 7428, Group 7632, Group 7803, Group 7997, and Group 8201, in addition to the provisionally elected Group 194, which are believed to correspond to elected SEQ ID NOs: 1 and 2.

Applicants reserve all rights to pursue the non-elected groups and sequences in one or more divisional application.

Accompanying this response is a petition for a three-month extension of time to and including April 28, 2008 pursuant to 37 CFR § 1.7(a) to respond to the Office Action mailed December 27, 2007 with the required fee authorization. No further fee is believed due. However, if any additional fee is due, the Director is hereby authorized to charge our Deposit Account No. 03-2775, under Order No. 12810-00197-US from which the undersigned is authorized to draw.

Respectfully submitted,

By 

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